IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4727 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIP RANJAN SINHA

Versus

MANOJBHAI BHAISHANKAR CHANDALIYA

Appearance:

1. Criminal Misc.Application No. 4727 of 2000

MR PV NANAVATI for Petitioners No. 1-2

MR KETAN DAVE for Respondent No. 1

MR VM PANCHOLI ADDL PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/02/2002

ORAL JUDGEMENT

#. Heard learned counsel Mr.P.V.Nanavati appearing for petitioners and Mr.Ketan Dave, learned counsel for respondent No.1 - original complainant, so also

Mr.V.M.Pancholi, learned APP for respondent No.2 - State.

#. The petitioners are accused of private complaint filed by the respondent in the Court of JMFC, Palitana for the offence punishable under Section 500 and 34 of IPC being Criminal Case No.1417 / 2000. Learned Magistrate has issued process under Section 204 of Cr.P.C. It is submitted by the petitioners that this Court by exercising the jurisdiction vested under Section 482 of Cr.P.C. should quash complaint and process issued by the Magistrate of concerned trial court. It is say of the petitioners that if the complaint is closely read, no ingredients of Section 500 or Section 34 are satisfied in reference to Section 94 of IPC, where defamation within the meaning of IPC is defined and explained with exceptions. This Court has carefully considered the averments made in the complaint and the cause of writing the alleged defamatory letter. For the sake of brevity and convenience, I would like to reproduce relevant part of the letter which is at Annexure-B pg.16.

"......

Dear Sir,

Re : Mr.Manoj Chandalia, Instructor at your Institute.

Mr.Manoj Chandalia, who, We understand, is an Instructor at your Palitana Institute visited our office on 17-11-99 along with the Insured of vehicle No.GJ-4D-102 to discuss about the claim of the said vehicle. According to the Insured Mr.Manoj Chandalia was his "Technical Advisor".

Mr.Chandalia subsequently created a scene in our office, misbehaved with our officers and staff and shouted at them.

You will appreciate that is not proper on the part of the Government Servant to act as "Technical Advice" in an insurance claim and to misbehave in an office, which is also a Government of India Undertaking.

You are requested to take a note of above facts.

Thanking you.

Yours faithfully,

Divisional Manager

CC : Principal
ITI, B/h Sir BPTI, Bhavnagar.

CC : Shri Jagdeeshan, IAS
Commissioner, Shram and Rojgar Mantralaya
Sachivalaya, Gandhinagar.
Please for information. "

#. According to the complainant as the Officers of the New Insurance Company had developed an enimical terms with father of the complainant, have concocted the story of his visit to the office of the New India Insurance Company on 17th November, 1999 and written defamatory letter just to pressurise the father of the complainant. The language of letter, according to the Counsel for complainant, is defamatory and the accused have tried to paint the complainant as rude, arrogant and discourteous and said letter describes him as a person of improper behavior. It is submitted that accused have tried to see that his status in the Department is adversely affected and his behaviour is manifest to unbecoming Government Servant.

#. It is not necessary to reproduce Section 499 of the IPC but plain reading of Exception [8] leads this Court to conclude that the stand taken by the petitioners is in accordance with law and the ingredients of offence punishable under Section 500 or Section 34 of IPC are not established on plain reading of the complaint itself if the complaint is closely read. The petitioner No.1 is Divisional Manager of New India Insurance Company of Bhavnagar Division and the petitioner No.2 Mr.U.G.Nair was Assistant Administrative Officer at the relevant point of time. In response to the querry raised by this Court, Counsel for the petitioner Mr.Nanavati has submitted that the Officer in the cadre of Assistant Administrative Officer is junior most in the cadre of Officer and comparatively, the post of Divisional Manager is highest post in a Division. In absence of positive averments in the complaint itself or without pointing out any speaking circumstances, it would not be legal or proper for this Court to infer that ingredients for the offence punishable under section 34 IPC are there on record, on plain reading of the complaint.

#. Undisputedly, the complainant was serving as Instructor in ITI at Palitana of District Bhavnagar. Above referred letter was written in official capacity on date 26th November, 1999 by the Divisional manager being

Head of the Department to the immediate superior. It is, in fact, complaint if any against the servant has to be made to the Head of the Department and / or immediate superior.

#. There is nothing per say defamatory in the letter. However, it is important to note that copies of the letter in question were forwarded only to the Principal of ITI, Bhavnagar and to the Commissioner of concerned Department having office at Sachivalaya, Gandhinagar. Mere sending of copies to the Principal of ITI at District Headquarter Bhavnagar and to the Secretary of the concerned Department, cannot be taken adversely to the accused that these copies were sent with a view to see defamatory statement is published or widely spreads amongst circle where the complainant is known. An element of mensria and intention of defamation, of course, can be assumed but in the present case, relevant circumstances are not available.

#. In recent years, aggrieved persons are in habit of sending copy of the complaint / representation to one or two more higher officials so that immediate Head of the Department may not be tempted to suppress the complaint or grievance may not put to curtain on the complaint received against immediate subordinates with a view to screen him. Moreover, the date of letter written is also important and in couple of days from the date of incident, it was despatched to the Principal of the Institution where the complainant was serving. An allegation as to malice against the father of the complainant is also not important or relevant because the father of the complainant had expressed his grievances aginst one of the surveyors working with New India Insurance Company and he has named said surveyor in the letter dated 14th October, 1999 [pg.24]. It is not a matter of dispute that Surveyors working with the Insurance Company are not employees of the company. It would be extraneous and not prudent to infer for this Court that with a view to support said Surveyor Mr.Vora against whom some complaint was made by the father of the complainant, the Divisional Manager and one Asstt. Administrative Officer, a very junior Officer have taken cause and have made complaint under collusion to the Head of the Department against the son of the President of Bhavnagar Motors Sangh. Even for the sake of arguments, if it is accepted that surveyor attached to the Insurance Company may have good rappo with the staff members or the concerned officers and even if taken at their face value and entirety, do not prima facie disclose that by taking cause for Mr.Vora - Surveyor, senior most officer of the

rank of the Divisional Manager attempted to defame the son of the person, who had any grievance or animosity against staff member or officers of the insurance company.

#. Confusion as to number of vehicle mentioned in the letter Exh.B pg.16 has been explained in the Affidavit-in-reply. Of course, there are words against words, if affidavits of parties are read closely. Whether, on plain reading of the complaint, ingredients of offence punishable under Section 500 of IPC, are satisfied or not, is the issue. This do not prima facie disclose offence punishable under Section 500 IPC.

#. I agree that Mr.Ketan Dave, learned counsel appearing for original complainant that the powers vested with the High Court under Section 482 of Cr.P.C. should be exercised sparingly. He has placed reliance on more than one judgments for the purpose and by citing relevant part of the decision in case of K.M.MATHEW V. STATE OF KERALA reported in AIR 1992 Criminal Law Journal pg.3379 : [AIR 1992 SC 7206]. It is submitted that petitioners should be asked to approached Learned J.M.F.C. The Apex Court in above referred judgment had observed that :-

"This High Court seems to be too technical in this regard. If one reads carefully the provisions relating to the trial of the summons cases, the power to drop the proceedings against the accused cannot be denied to the Magistrate. Section 204 of the Code indicates that the proceedings before the Magistrate commences upon taking cognizance of the offence and the issue of summons to the accused. When the accused enters the appearance in response to the summons, the Magistrate has to take proceedings under Chapter XX of the Code. ut the need to try the accused arises when there is allegation in the complaint that the accused has committed the crime. If there is no allegation in the complaint that the accused has committed the crime. If there is no allegation in the complaint involving the accused in the commission of the crime, it is implied that the Magistrate has no jurisdiction to proceed against the accused.

B] It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on the reconsideration of the complaint that there is no

offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceeding or rescind the process. The order issuing the process as an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused."

Mr.Ketan Dave, learned counsel for original complainant has also relied on the decision of the Bombay High Court reported in 1994 Criminal Law Journal pg.1726. The Bombay High Court in case of PANDEY AJAY BHUSAN VS. S.B.JAIN reported in 1994 CRI.L.J.1726 has held that;

"11. ..... the Court which is seized of the matter is deprived of an opportunity of applying mind to the issues involved after appearance of the accused, if the High Cout intervenes in each and every matter or in most of the matters under S.482, in a "summons case", it so happens that the material which is sought to be placed formally on record by the parties to the proceedings is virtually pre judged in the High Court, without giving the parties an opportunity to adduce appropriate evidence according to law before the trial Court. Sometimes, it may cause prejudice to the complainant and sometimes it may cause prejudice to the accused but, in any case, prejudice is certainly caused to the interest of justice in such matters if the Court, which is seized of the matter, is deprived of the opportunity to apply its mind to the facts of the case when such material is placed before him, after appearance of the accused, by the said accused. This needs to be averted and checked."

##. Relying on aforesaid decision referred to hereinabove, Mr.Ketan Dave, learned counsel for original complainant has submitted that the petitioners should be relegated to the concerned Magistrate and they should be asked to apply for recalling process or with discharge application. But the stand taken by the present petitioners cannot be said to be defence plea and they

cannot pray for terminating of proceedings or dropping of proceedings on the probabilities. Their say is that learned Magistrate if would have gone through the relevant provisions of Section 499 and 34 of IPC, after reading the complaint closely, the Magistrate would not have issued process at all. Writing for which the complaint is filed as said earlier, if not per say defamatory. It is a simple complaint to the Head of the Department. However, Mr.Nanavati, learned counsel for petitioners submits that the letter written by the petitioner No.1 even is not in form of complaint but in the form of protest. On the contrary, it is submitted by learned counsel Mr.Nanavati that the complainant must have been tempted to file present complaint under apprehension that if grievance of the petitioner was well received by the Principal and Secretary of the concerned Department, then he may have to face departmental proceedings and therefore, such complaint may bring pressure on the complainant or informer of the department pending criminal proceeding. Obviously, both these persons were and are important witnesses if departmental proceedings if initiated. Even according to the learned APP Mr.Pancholi, who has rightly submitted that in view of the ratio laid down by the Apex Court in case of K.M.MATHEW, it is also open for the petitioners to approach this Court if the ingredients of a particular complaint is, prima facie, not established, under Section 482 of the Cr.P.C.. On this count only this petition would not fail. The observations of the Apex Court in case of M.KRISHNAN V. VIJAY SINGH AND ANOTHER reported in 2001 AIR SCW 4142 help the petitioners. It says that

> "Revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value of accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with

> mala fide and has been initiated maliciously with the ulterior motive for wrecking vengence on the accused and with a view to spite him due to private and personal grudge."

##. Without going into merits of inter say allegations made by the parties, point raised by the petitioners seems to have well founded and as per the observations of the Apex Court quoted hereinabove, some of the elements are present in this case and therefore, this Court is inclined to terminate the proceedings emerged from the complaint filed by the respondent No.1 before the Court of JMFC, Palitana being Criminal Case No.1417/2000 for the offence punishable under Section 500 read with Section 34 of the IPC.

#. In view of above discussion, present petition deserves to be allowed and the same is allowed accordingly. The proceedings emerged from the complaint filed by the respondent No.1 before the Court of JMFC, Palitana being Criminal Case No.1417/2000 for the offence punishable under Section 500 read with Section 34 of the IPC are hereby quashed and set aside. Rule is made absolute accordingly.

Date : 7-2-2002 [C.K.Buch, J.]

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